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DEPARTMENT OF COMMERCE

International Trade Administration

[C-552-813]

Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain steel wire garment hangers (garment hangers) from the Socialist Republic of Vietnam (Vietnam). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: [Insert Date of Publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: John Conniff (for the Hamico Companies[1]) at 202-482-1009, and Robert Copyak (for the Infinite Companies[2]) at 202-482-2209, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

On December 29, 2011, the Department received a countervailing duty (CVD) petition concerning imports of garment hangers from Vietnam filed in proper form by M&B Metal

[1] The Hamico Companies are the South East Asia Hamico Export Joint Stock Company (SEA Hamico), Nam A Hamico Export Joint Stock Company (Nam A), and Linh Sa Hamico Company Limited (Linh Sa).

[2] The Infinite Companies are Infinite Industrial Hanger Limited (Infinite) and Supreme Hanger Company Limited (Supreme).

Products Company, Inc., Innovative Fabrication LLC/Indy Hanger, and US Hanger Company, LLC (collectively, petitioners).[3] The Department initiated an investigation on January 18, 2012.[4] In the Initiation, the Department stated that it intended to rely on data from U.S. Customs and Border Protection (CBP) for purposes of selecting the mandatory respondents.[5] On January 18, 2012, the Department released the results of a query performed on the CBP's database for calendar year 2011.[6] Due to the large number of producers and exporters of garment hangers in Vietnam, we determined that it was not practicable to individually investigate each producer and/or exporter. We, therefore, selected the following two producers and/or exporters of garment hangers to be mandatory respondents: Infinite and SEA Hamico, the largest publicly identifiable producers and/or exporters of the subject merchandise.[7] On February 10, 2012, we issued the initial CVD questionnaire to the Government of the Vietnam (GOV) and the selected mandatory respondents. We also issued a confirmation of shipment questionnaire on the same date to Infinite and SEA Hamico.

On February 14, 2012, Infinite and SEA Hamico confirmed that they shipped subject merchandise to the United States during the period of investigation (POI). On March 2, 2012,

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[3] See Petition for the Imposition of Countervailing Duties (Petition). A public version of the Petition and all other public documents and public versions for this investigation are available on the public file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.
[4] See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation, 77 FR 3737 (January 25, 2011) (Initiation), and accompanying Initiation Checklist.
[5] See Initiation, 77 FR at 3739.
[6] See Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding "Release of Customs and Border Protection (CBP) Query Results" (January 18, 2012).
[7] See Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, "Respondent Selection" (February 10, 2012). The companies are listed in alphabetical order and not listed based on export value/volume.

the Department postponed the deadline for the preliminary determination by 65 days to no later than May 29, 2012.[8]

On February 3, 2012, petitioners submitted untimely new subsidy allegations concerning electricity that the GOV allegedly provided for less than adequate remuneration (LTAR). On March 29, 2012, the Department issued a decision memorandum in which it declined to initiate an investigation into petitioners' allegation.[9]

The GOV submitted its response to the initial questionnaire on March 30, 2012. SEA Hamico submitted its questionnaire response on behalf of the Hamico Companies on April 2, 2012. Infinite submitted its questionnaire response on behalf of the Infinite Companies on April 3, 2012. The Department issued supplemental questionnaires to GOV, the Hamico Companies, and the Infinite Companies from April 25 through May 14, 2012. The Department received the supplemental questionnaire responses from May 4 through May 22, 2012.

Period of Investigation

The POI for which we are measuring subsidies is January 1, 2011, through December 31, 2011, which corresponds to the most recently completed fiscal year.[10]

Scope of the Investigation

The merchandise subject to the investigation is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may

[8] See Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation, 77 FR 3737 (January 25, 2012).
[9] See Memorandum to Melissa G. Skinner, Director, Office 3, AD/CVD Operations, "Decision Memorandum on a New Subsidy Allegation" (March 29, 2012).
[10] See 19 CFR 351.204(b)(2).

also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of the investigation are (a) wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome-plated steel wire garment hangers with a diameter of 3.4mm or greater.

The products subject to the investigation are currently classified under U.S. Harmonized Tariff Schedule (HTSUS) subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Scope Comments

As discussed in the Initiation, we set aside a period for interested parties to raise issues regarding product coverage.[11] However, no parties submitted scope comments on the records of the AD or CVD investigations.

Injury Test

Because Vietnam is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On February 10, 2012, the ITC made a preliminary determination finding that there is a reasonable indication that an industry in

[11] See Initiation, 77 FR at 3737.

the United States is threatened with material injury by reason of imports of garment hangers from Vietnam.[12]

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On May 9, 2012, petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigation of garment hangers from Vietnam. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final determination in the companion AD investigation of garment hangers from Vietnam. The final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued on or about October 9, 2012.

Application of the CVD Law to Imports from Vietnam

On April 1, 2010, the Department published the Carrier Bags from Vietnam Final Determination in which we found the CVD law applicable to Vietnam.[13] Furthermore, on March 13, 2012, the President signed into law HR 4105, which makes clear that the Department has the authority to apply the CVD law to non-market economies such as Vietnam. The effective date of the enacted legislation makes clear that this provision applies to this proceeding.[14] Additionally, for reasons stated in the Carrier Bags from Vietnam Decision Memorandum at Comment 3, we are using the date of January 11, 2007, the date on which Vietnam became a member of the WTO, as the date from which the Department will identify and measure subsidies in Vietnam for

[12] See Steel Wire Garment Hangers from Taiwan and Vietnam (Investigation Nos. 701-TA-487 and 731-TA-1197-1198 (Preliminary), USITC Publication 4305, February 2012).
[13] See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination, 75 FR 16428 (April 1, 2010) (Carrier Bags from Vietnam Final Determination), and accompanying Issues and Decision Memorandum (Carrier Bags from Vietnam Decision Memorandum) at "Land Rent Reduction or Exemption for Exporters."
[14] See HR 4105, 112th Cong. 1(b) (2012) (enacted).

purposes of CVD investigations.

Allocation Period

The average useful life (AUL) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[15] No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) through (v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on

[15] See U.S. Internal Revenue Service Publication 946 (2008), How to Depreciate Property, at Table B-2: Table of Class Lives and Recovery Periods.

whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[16]

The Hamico Companies

SEA Hamico, Nam A, and Linh Sa all produce subject merchandise. SEA Hamico owns a majority stake in Nam A and Linh Sa. Therefore, in accordance with 19 CFR 351.525(b)(6)(vi), we preliminarily determine that SEA Hamico, Nam A, and Linh Sa are cross-owned companies. Further, because all three firms produce subject merchandise, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by SEA Hamico, Nam A, and Linh Sa to the combined sales of the three firms, net of intra-company sales.

The Infinite Companies

Infinite and Supreme are owned by the same individual, Person A.[17] Therefore, in accordance with 19 CFR 351.525(b)(6)(vi), we preliminarily determine that Infinite and Supreme are cross-owned. Because Infinite and Supreme both produce subject merchandise, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Infinite and Supreme to the combined sales of the two firms, net of intra-company sales.

Subsidy Valuation

Interest Rate Benchmark

For purposes of this preliminary determine we require the use of a short-term loan benchmark denominated in U.S. dollars. Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient

[16] See Fabrique de Fer de Charleroi, SA v. United States, 166 F. Supp. 2d 593, 600-604 (CIT 2001) (Fabrique).
[17] The name of the individuals that owns Infinite and Supreme is business proprietary. We refer to the principal owner of the two firms as Person A.

could actually obtain on the market," indicating that a benchmark must be a market-based rate. Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes.[18] If the firm does not receive any comparable commercial loans during the relevant periods, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."[19] In the Carrier Bags from Vietnam Preliminary Determination, the Department determined that loans provided by Vietnamese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[20] We preliminarily determine that there is no information on the record of the instant investigation that warrants a reconsideration of this finding. Therefore, we continue to find that the benchmarks that are described under 19 CFR 351.505(a)(3)(i) and (ii) are not appropriate and that we must use an external, market-based benchmark interest rate.

For short-term U.S. dollar loans, we have followed the methodology developed over a number of successive PRC investigations. Specifically, for U.S. dollar loans, the Department used as a benchmark the one-year dollar interest rates from the London-Interbank Offered Rate (LIBOR) indexes, plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating.

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[18] See 19 CFR 351.505(a)(3)(i).

[19] See 19 CFR 351.505(a)(3)(ii).

[20] See 74 FR at 45814, which references a Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration, "Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam A Review of Vietnam's Banking Sector" (August 28, 2009) (Vietnam Banking Memorandum). We have placed the Banking Memorandum on the record of the instant investigation. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Placement of Banking Memorandum on Record of Investigation," (May 29, 2012). The Department's conclusions in the Vietnam Banking Memorandum were not reversed as a result of the Carrier Bags from Vietnam Final Determination. See Carrier Bags from Vietnam Decision Memorandum at "Application of Facts Otherwise Available and AFA for API and Fotai."

Land Benchmark

Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles.

In Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 74 FR 45811, 45815-16 (September 4, 2009) (Carrier Bags from Vietnam Preliminary Determination), the Department had also examined land rent exemptions and established a benchmark for land in Vietnam. The Department explained that it could not rely on the use of so-called "first-tier" and "second-tier benchmarks" to assess the benefits from the provision of land at LTAR in Vietnam. It also determined that the purchase of land-use rights in Vietnam is not conducted in accordance with market principles. Id. at 45815, referencing the Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration, "Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Land Markets in Vietnam" (August 28, 2009) (Land Market Memorandum).[21] Therefore, in selecting a benchmark for land, the Department analyzed comparable market-based prices in another country at a comparable level

[21] We have placed the Land Market Memorandum on the record of the instant investigation. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Placement of Land Market Memorandum on Record of Investigation," (May 29, 2012).

of economic development within the geographic vicinity of Vietnam. As a result of this analysis, the Department selected the cities of Pune and Bangalore in India as providing the closest match among options on the record to Vietnam in terms of per capita GNI and population density, and derived a simple average of all rental rates for industrial property in both cities to use as the appropriate land benchmark for Vietnam. Id. at 45816.

In the final determination of retail carrier bags, the Department retained this land benchmark methodology unchanged from the preliminary determination.[22]

We find no information on the record of the instant investigation that warrants a revision to the land benchmark methodology developed in Carrier Bags from Vietnam Preliminary Determination. Therefore, we continue to find that we cannot rely on the use of "first" and "second-tier" benchmarks for purposes of the land for LTAR benchmark because the GOV continues to retain land-use pricing authority (including lease rates) for land leased directly from the government, restrictions are still in place with regard to land that is sub-leased by private parties, and the land-use contracts held by private parties, that serve as the basis for sub-leases, have been granted by government agencies that have been set under government decrees.[23] For the same reasons, we further continue to find that that the purchase of land-use rights in Vietnam is not conducted in accordance with market principles.

Accordingly, to measure the benefit for land for LTAR in this preliminary determination, we are using a land benchmark based on the rental rates for industrial property in Pune and Bangalore. Using the same data sources used in Carrier Bags from Vietnam Preliminary Determination, we sought 2011 data on those rental rates. We find that the 2008 data from

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[22] See Carrier Bags from Vietnam Decision Memorandum at "Land Rent Reduction or Exemption for Exporters," footnote 23.
[23] See Land Memorandum at 6.

Carrier Bags from Vietnam Preliminary Determination remain the latest data available. Therefore, we are using the same simple average of all rental rates for industrial property in the cities of Pune and Bangalore that was calculated in Carrier Bags from Vietnam Preliminary Determination and adopted in Carrier Bags from Vietnam Final Determination, indexed forward to 2011 using consumer price index data for India, as published by the International Monetary Fund.

Analysis of Programs

I. Programs Preliminary Determined to be Countervailable

A. Land Preferences for Enterprises in Encouraged Industries or Industrial Zones

Decree No. 142/2005/NC-CP (Decree 142) of November 14, 2005, provides for the collection of land rents and water surface rents in connection with land leased by the GOV. See the GOV's March 30, 2012, Questionnaire Response at Exhibit 34. Decree 142 states that land rent shall be reduced or exempted under certain circumstances enumerated under the law and also where the Prime Minister determines it is appropriate to do so, based on the recommendation of the agency heads and provincial and municipal governments. Id. at Articles 13 - 15. For example, Decree 142 provides for land exemptions for firms located in certain geographical areas facing socio-economic difficulties. Id. at Article 14.

The Hamico Companies reported that on January 12, 2004, the GOV's Department of Natural Resources and Environment granted SEA Hamico land-use rights for its facility in the Chau Son Industrial Zone Area located in Phuong Le Hong Phong, Phu Ly City of Ha Nam Province. The Hamico Companies state that SEA Hamico signed a "new land lease contract" with the GOV with regard to the same plot of land on August 11, 2009. The lease contract in effect during the POI establishes an annual rent charged to SEA Hamico. The lease contract further specifies that the annual rent is subject to the provisions of Decree 142. See the Hamico Companies' April 2, 2012, Questionnaire Response, Exhibit 7 at 15. However, the preferential investment certificate issued to SEA Hamico indicates that SEA Hamico is exempted from paying the annual rent on the land for ten years, a period that extends into the POI, and shall enjoy a 50 percent reduction in rent during the second ten years of the lease. See The GOV's March 30, 2012, Questionnaire Response at Exhibit 43. Further, Decision No. 2459/QD-CT, December 28, 2011, (Decision No. 2459) issued by the GOV's Department of Taxation of Ha Nam Province specifies the amount of rent exemption that SEA Hamico received during the POI. See The GOV's March 30, 2012, Questionnaire Response at Exhibit 47. Decision No. 2459 states that the rent exemption was provided pursuant to the "encouraged investment provisions" of Article 14.4 of Decree 142, which deals with rent exemptions provided to investment projects located in geographic areas facing socio-economic difficulties. See the GOV's March 30, 2012, Questionnaire Response at Exhibit 34.

The Hamico Companies report that Nam A also received exemptions on annual lease payments in connection with its land lease with People's Committee of Ha Nam Province during the POI. See the Hamico Companies May 16, 2012, supplemental questionnaire response at 5 and Exhibit 3, which contains Nam A's lease contract. The Hamico Companies state that Nam A's benefit is "similar" to that received by SEA Hamico in that the GOV provided the lease exemption contingent upon Nam A leasing land in a geographically designated area. Id. at 5.

As explained above, we have adopted January 11, 2007, the date on which Vietnam became a member of the WTO, as the date from which the Department will identify and measure subsidies in Vietnam. In the case of SEA Hamico, the lease contract in question was signed prior to the cut-off date. However, as indicated by the Hamico Companies, SEA Hamico signed a "new lease contract" with the GOV concerning the plot of land at issue on August 11, 2009, which established the relevant terms of the lease after the cut-off date. Therefore, we find that it is appropriate to consider the land rent exemptions received by SEA Hamico during the POI in connection with the lease contract for purposes of our subsidy analysis.

Information on the record indicates that SEA Hamico and Nam A received the rent exemptions because the land plots were located in designated geographical areas and, thus, we preliminarily determine that the exemptions are specific under section 771(5A)(D)(iv) of the Act. We also preliminarily determine that the leasing of the land constitutes a financial contribution, in the form of a provision of a good, within the meaning of section 771(5)(D)(iii) of the Act. In addition, we find that the rent exemptions confer a benefit in accordance with section 771(5)(E) of the Act and 19 CFR 351.511(a).

The land contracts SEA Hamico and Nam A signed with the GOV did not require lump-sum payments at the time the original leases were signed. Rather, the contracts call for annual rent payments, which the GOV subsequently exempted. Thus, in accordance with 19 CFR 351.524(c)(1), we preliminarily determine that the rent exemptions received by SEA Hamico and Nam A constitute recurring subsidies. Therefore, pursuant to 19 CFR 351.524(a), we have allocated benefits from the rent exemptions to the year in which the exemptions were received. See also 351.511(b). As a result, for purposes of this preliminary determination, the benefit calculations for the rent exemptions are limited to those SEA Hamico and Nam A received during the POI.

As discussed above in the "Land Benchmark" section, we continue to find that land prices in Vietnam are not based on market principles, consistent with the findings in the Carrier

Bags from Vietnam Preliminary Determination; unchanged in Carrier Bags from Vietnam Decision Memorandum at "Land Rent Reduction or Exemption for Exporters."

Consequently, we continue to find that we cannot rely on the use of "first" and "second-tier" benchmarks for purposes of the land for LTAR benchmark and, as was done in Carrier Bags from Vietnam Preliminary Determination, we must use a benchmark based on comparable market-based prices outside Vietnam. Therefore, for purposes of the preliminary determination, we have used as our benchmark the calculated average of the rental rates for Pune and Bangalore, which corresponds to $6.088 per square meter per month. See Land Memorandum. This rate corresponds to rental prices during calendar year 2008, which we determine to be the latest such data available. Therefore, in our preliminary calculations, we indexed the 2008 price into a 2011 price using consumer price index data for India, as published by the International Monetary Fund.

To calculate the benefit, we multiplied the land benchmark discussed above by the total area of the land plots at issue. In this manner, we derived the benefit attributable to the land lease exemptions enjoyed by SEA Hamico and Nam A during the POI. To calculate the net subsidy rate, we converted the benefits into Vietnamese Dong and divided the total benefit by the total sales of the Hamico Companies, net of intra-company sales. On this basis, we determine the net countervailable subsidy to be 18.59 percent ad valorem for the Hamico Companies.

Regarding Linh Sa, the Hamico Companies reported that it signed its lease with cross-owned affiliate SEA Hamico and not with a GOV entity. See the Hamico Companies May 22, 2012, Supplemental Questionnaire Response at 6 and Exhibit 1, which contains the lease Lihn Sa signed with SEA Hamico. Based on this information, we preliminarily determine that Lihn Sa's lease with SEA Hamico does not constitute a government financial contribution as described under section 771(5)(D)(iv) of the Act.

Similarly, the Infinite Companies reported that Infinite leased land from Vinh Hung Limited Liability (Vinh Hung), which the Infinite Companies claim is a private company. The Infinite Companies also reported that Supreme leased land from a private party. See the Infinite Companies' April 3, 2012, initial questionnaire response at pages 21 through 24 and Exhibits 8 - 9. We obtained ownership information from the GOV regarding the party that leased land to Infinite and Supreme. Our review of this ownership information leads us to preliminarily determine that the lessors are private companies and, as such, its leases of land to Infinite and Supreme do not constitute a government financial contribution as described under section 771(5)(D)(iv) of the Act. See the GOV's May 22, 2012, Supplemental Questionnaire Response at 3 – 5 and Exhibit GOV S2-7.

B. Corporate Income Tax Reductions for Newly Established Investment Projects

We started an investigation of corporate income tax exemptions and reductions pursuant to alleged income tax preferences in industrial zones, and sought relevant information from the GOV and the respondents. The Hamico Companies reported that SEA Hamico received a 50 percent reduction in income taxes payable with regard to the 2010 tax return that it filed during the POI. The 2010 tax returns of Nam A and Linh Sa indicate that the firms were in a tax-loss position and, therefore, had no taxable income to exempt. The 2010 tax returns of the Infinite Companies filed during the POI indicate that the firms did not receive any income tax deductions or exemptions.

Information from the Hamico Companies and the GOV indicate that SEA Hamico received the exemption pursuant to the 1997 Law on Enterprise Income Tax, No. 57/L-CTN

(Law No. 57), Law on Domestic Investment Encouragement, No. 03/1998/QH10 (Law No. 03) and the Implementing Decree of Law on Domestic Investment Encouragement of 1998, Decree No. 51/1999/ND-CP (Decree No. 51). See the GOV's May 22, 2012, Supplemental Questionnaire Response at 3; see also the Hamico Companies' May 14, 2012, questionnaire response, Exhibit 1 at 9. This income tax exemption is also referenced in the certificate of investment incentives issued to SEA Hamico by the People's Committee of Ha Nam Province. Id. at Exhibit 4. According to the GOV, SEA Hamico was entitled to an income tax exemption for two years and a 50 percent reduction in income taxes for the subsequent four years pursuant to Article 17, Clause 1, Point b of Law No. 57; Articles 15.7 and 21.1 of Law No. 3; and List A of Decree No. 51. See the GOV's May 22, 2012, Supplemental Questionnaire Response at 3 – 4. Specifically, the GOV states that this entitlement is based on Law No. 3, Article 15.7, "Branches and trades that should be given priority in each period of socio-economic development."

The GOV submitted Hamico's Preferential Investment Certificate No. 1107/GCNUD (September 23, 2003) and Certificate of Amendment to Investment Certificate No. 06221000076 (February 5, 2010), which describe the incentives applicable to Hamico's investment project. See the GOV's May 22, 2012, Third Supplemental Questionnaire Response at Exhibit GOVS3-3. We note that while these investment certificates identify the applicable laws and regulations, including Law No. 57, Law No. 3, and Decree 51, they do not identify the specific sections of the laws or decree. Thus, while the GOV has specified Article 15.7 of Law No. 3 as defining the entitlement, we note that Article 15 contains other investment activities with equal entitlement to the same incentives, e.g., Article 15.3, investment projects related to "the production of and trading in export goods," under which Hamico could qualify for the same exemption and reduction in income tax. Consequently, we will continue to seek information to clarify the precise basis on which Hamico benefited from this program.

As noted above, we initially examined the income tax exemption and reduction program pursuant to alleged tax preferences in industrial zones. As discussed above, the facts on the record thus far indicate the program provides benefits based on investment activities or certain enterprises, specifically "branches and trades that should be given priority in each period of socio-economic development" with regard to Hamico. To the extent that this constitutes a different program from among those that we enumerated in our initiation, 19 CFR 351.311(b) allows the Department to investigate other possible countervailable subsidies discovered during the course of a proceeding. This approach is consistent with the Department's practice.[24]

We preliminarily determine that the tax reduction provided to SEA Hamico under this program is specific to a group of enterprises, namely "branches and trades that should be given priority in each period of socio-economic development" specified under Article 15.7 of Law No. 3 within the meaning of section 771(5A)(D)(i) of the Act. The income tax reduction and exemption are financial contributions in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act, and provide a benefit to SEA Hamico in the amount of tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).

To calculate the net subsidy rate, we divided the amount of SEA Hamico's tax savings, as indicated on the 2010 tax return it filed during the POI, by the combined total sales of SEA Hamico, Nam A, and Linh Sa, net of intra-company sales. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.93 percent ad valorem for the Hamico Companies.

[24] See Carrier Bags from Vietnam Preliminary Determination, 74 FR 45818; unchanged in Carrier Bags from Vietnam Decision Memorandum at "Income Tax Preferences for Encouraged Industries."

C. Import Duty Exemptions or Reimbursements for Raw Materials

Duty exemptions on raw materials are addressed in the Law on Import Duty and Export Duty, Law No. 45/2005/QH-11 (Law No. 45) and Decree No. 87/2010/ND-CP (Decree 87). See the GOV's March 30, 2012, questionnaire response at Exhibits 60. Specifically, under Law No. 45, Chapter IV, import duty exemption is provided for "raw materials and supplies used for manufacture of equipment and machinery" (Article 16.6(d)) and "Raw materials, supplies and accessories imported for production activities of investment projects on the list of domains where investment is particularly encouraged or the list of geographical areas meeting with exceptional socio-economic difficulties" (Article 16.9). Id. at Exhibit 60. We believe raw materials may also be imported duty-free under Article 16.4, "goods imported for processing for foreign partners then exported or goods exported to foreign countries for processing for Vietnam then re-imported under processing contracts." Id. Additionally, Article 19 provides for reimbursement of duties on raw materials or supplies imported for the production of export goods, for which import tax has been paid." Id.

Decree No. 87, enacted in August 2010 reflects the implementation of Law No. 45 that was in effect during the POI. Id. at Exhibit 61. Article 12 of Decree 87 provides additional detail for the duty exemptions on raw materials originally provided under Law No. 45. Articles 12.6(d) and 12.14 specify that the exemptions for "raw materials and supplies used for manufacture of equipment and machinery" and "raw materials, supplies and accessories imported for production activities of investment projects on the list of domains where investment is particularly encouraged or the list of geographical areas meeting with exceptional socio-economic difficulties" will apply only where such raw materials and supplies "cannot be domestically produced yet." Id. With regard to "goods imported for processing for foreign parties," Article 12.4 leaves the import duty exemption unchanged, but adds that the exported processed products are also exempt from export duty.

Infinite and the GOV state that Infinite received exemptions on raw material imports based the export processing contracts it had with foreign firms. SEA Hamico and Lihn Sa also state that they received duty exemptions on raw materials. The Hamico Companies reported that Nam A did not import raw materials during the POI. Most, if not all, of the sales of the Infinite Companies and Hamico Companies are devoted to exports.

For import duty exemptions on raw materials for exported goods, the exemptions cannot exceed the amount of duty levied; otherwise, the excess amounts exempted confer a countervailable benefit under 19 CFR 351.519(a)(1)(i). Moreover, under 19 CFR 351.519(a)(4), the government must have a system to confirm which inputs are consumed in production and in what amounts; otherwise, the exemptions confer a benefit equal to the total amount of duties exempted. In the Retail Carrier Bags from Vietnam Final Determination, the Department concluded that the GOV does not have in place a system to confirm which inputs are consumed in the production of the exported products and in what amounts, including a normal allowance for waste. See Carrier Bags from Vietnam Decision Memorandum at "Import Duty Exemptions for Imported Raw Materials for Exported Goods." No information on the record of the instant proceeding warrants a reconsideration of that finding; therefore, we find that the import duty exemptions on raw materials confer a benefit equal to the total amount of the duties exempted, in accordance with 19 CFR 351.519(a)(4).

Because the receipt of import duty exemptions on raw materials was contingent upon export performance as one or more criteria, we preliminarily determine that they are specific in accordance with section 771(5A)(B) of the Act. We further preliminarily determine that the exemptions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act.

To calculate the benefit, we summed the amount of duties saved during the POI. To calculate the net subsidy rate, we divided the benefit by respondents' total export sales, net of intra-company sales. On this basis, we preliminarily determine a net countervailable subsidy rate of 1.34 percent ad valorem for the Hamico Companies and 11.03 percent ad valorem for the Infinite Companies.

D. Preferential Lending to Exporters

The Hamico Companies reported that SEA Hamico and Linh SA had loans outstanding during the POI that were issued by the Vietnam Joint Stock Commercial Bank for Industry and Trade (Vietinbank) as well as an additional lending institution.[25] See the Hamico Companies' April 2, 2012, questionnaire response at Attachment 1; see also the Hamico Companies May 22, 2012, Supplemental Questionnaire Response at Attachment I, which contains the loan information of the additional lending institution. The GOV states that SEA Hamico and Linh Sa received these loans in connection with an "export loan program" operated by the respective lending institutions. See the GOV's March 30, 2012, questionnaire response at 24. According to the GOV, under this program, the lending institutions offered "supported" interest rates to exporters, provided that they use the proceeds of the loan in the manner specified in the contract, follow the payment schedule specified in the contract, conduct payment for exporting through the lending institution, and sell the foreign exchange earned from the export sale through the lending institution. Id. Regarding the Vietinbank, information from the GOV specifically indicates that Vietinbank offered the "preferential" interest rates to exporters in an effort to

[25] The identity of this lending institution is business proprietary.

implement its “Export Loan Program.” See the GOV’s May 16, 2012, supplemental questionnaire response at Exhibit 2. The Hamico Companies reported that Nam A did not have any loans outstanding during the POI. The Infinite Companies similarly reported that they did not have any loans outstanding during the POI.

In past CVD proceedings involving Vietnam, the Department has found Vietinbank to be a state-owned commercial bank (SOCB) and thus, a government authority capable of providing a financial contribution as described under section 771(5)(D)(i) of the Act. See Carrier Bags from Vietnam Preliminary Determination, 74 FR at 45817.[26] Information provided by the GOV indicates that it owned approximately 80 percent of Vietinbank during the POI. See the GOV’s May 16, 2012, supplemental questionnaire response at 4. Hence, we continue to find that Vietinbank is a government authority. Therefore, we preliminarily determine that the loans issued to SEA Hamico and Lihn Sa by Vietinbank constitute a financial contribution by a government authority within the meaning of section 771(5)(D)(i) of the Act. Regarding the additional lending institution, because the Hamico Companies identified loans outstanding from this institution as financing offered “under the export loan program” we find, for purposes of the preliminary determination, that such loans constitute a financial contribution by a government authority within the meaning of section 771(5)(D)(i) of the Act.

We further preliminarily determine that, pursuant to section 771(5)(E)(ii) of the Act, loans issued to SEA Hamico and Lihn Sa under this program confer a benefit equal to the difference between what the recipients paid on the loans from the lending institutions and the amount they would have paid on comparable, commercial loans. In determining the amount

[26] The Department’s finding that Vietinbank was a government authority operating as a SOCB was not reversed as a result of the Carrier Bags from Vietnam Final Determination. See Carrier Bags from Vietnam Decision Memorandum at “Application of Facts Otherwise Available and AFA for API and Fotai.”

SEA Hamico and Lihn Sa would have paid on comparable, commercial loans, we employed the interest rate benchmark discussed above in the "Interest Rate Benchmark" section. Information from the GOV indicates that receipt of the Vietinbank loans are contingent, in part, upon export activities and, thus, we preliminarily determine that this program is specific under section 771(5A)(B) of the Act.

Next, we summed the benefit calculated on each loan the firms had outstanding under the program during the POI and divided the total benefit by the combined total export sales of SEA Hamico, Nam A, and Lihn Sa, net of intra-company sales. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.39 percent ad valorem for the Hamico Companies.

II. Program Preliminarily Determined Not To Confer Benefits During the POI

A. Import Duty Exemptions on Imports of Goods for Encouraged Projects

Article 12.6 of Decree 87 allows firms with investment in encouraged projects and/or located in certain geographical areas (which includes industrial zones) to receive duty exemptions on import of goods to create fixed assets and equipment. Infinite, SEA Hamico, and Lihn Sa are located in industrial zones. We preliminarily determine that information from Infinite indicates that it received duty exemptions under this program. Regarding the Hamico Companies, though they qualified for duty exemptions under the program, information provided thus far indicates that, absent the program, the duty rates on the equipment the Hamico Companies imported were zero.

Because the receipt of import duty exemptions on fixed assets was contingent upon the firms' location in a designated geographic area, we preliminarily determine that they are regionally-specific in accordance with section 771(5A)(D)(iv) of the Act. We further preliminarily determine that the exemptions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act and confer a benefit under section 771(5(E) and 19 CFR 351.519(a)(4).

Normally, we treat exemptions from indirect taxes and import charges, such as tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(1). Therefore, because these exemptions are for goods used in creating capital equipment, we find that the duty exemptions are tied to the company's capital assets, and we have examined the tariff exemptions that respondents received under the program throughout the period between January 11, 2007, (the "cut-off" date for Vietnam) and the POI.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. Next, we summed the amount of duty exemptions received in each year. Then we divided the total amount of tariff exemptions by the corresponding total sales for the year in which the exemptions were received. Those exemptions that were less than 0.5 percent of total sales were expensed to the year of receipt. Those exemptions that were greater than 0.5 percent of total sales were allocated over the AUL using the methodology described under 19 CFR 351.524(d)(2) and then divided by respondents' total sales during the POI, net of intra-company sales. In the case of Infinite, the benefits received under the program were fully expensed prior to the POI.

III. Programs Preliminarily Determined To Be Not Used

A. Grants to Firms that Employ More than 50 Employees

The GOV self-reported the existence of this program in which it provides grants to firms that employ more than 50 employees. See the GOV's March 30, 2012, questionnaire response at 101. The GOV further reported that the Hamico Companies may have received benefits under the program given that the investment certificate for Nam A indicates that Nam A is eligible to receive funds under the program. Id.; see also the Hamico Companies' May 14, 2012, questionnaire response at Exhibit 5, which contains Nam A's investment certificate.

There is no evidence of the Infinite Companies' use of this program in its questionnaire response, investment certificate, or financial statements. Regarding the Hamico Companies, they explain that though they are eligible to participate in the program, they have not received any funds under the program from the GOV. See the Hamico Companies May 16, 2012, questionnaire response at 7. On this basis, we preliminarily determine that this program was not used by the Hamico and Infinite Companies.

B. Provision of Water for LTAR

The Infinite Companies reported that they draw their water from their own well located on site and, thus, do not pay water fees to the GOV. See the Infinite Companies May 11, 2012, supplemental questionnaire response at 11. Regarding the Hamico Companies, source documents for SEA Hamico indicate that it paid water fees to the GOV during the POI and that these fees were equal to those fees charged to businesses engaged in commercial and production activities, as set by the provincial government. See the Hamico Companies' April 2, 2012, questionnaire response at 28 and Exhibits 11 – 13. Concerning Nam A, its investment certificate provides that it is eligible to receive exemptions on its "water rent." See the Hamico Companies'

May 14, 2012, questionnaire response at Exhibit 5. However, despite qualifying for such an exemption, the Hamico Companies state that Nam A did not use the program because it did not use "surface water" (i.e., water sources rented from the GOV) in its production process. See the Hamico Companies' May 16, 2012, questionnaire response at 6 – 7. Notwithstanding the Hamico Companies' claims regarding Nam A, information from the Hamico Companies indicates that Nam A paid water fees to the GOV during the POI and that these fees were equal to those fees charged to businesses engaged in commercial and production activities, as set by the provincial government. See the Hamico Companies May 22, 2012, Supplemental Questionnaire Response at Exhibit 9. Similarly, information from Lihn Sa and the GOV indicates that the firm paid a water usage rate equal to the rate charged to businesses engaged in commercial and production activities. See the GOV's March 30, 2012, Questionnaire response at Exhibit 3 and the Hamico Companies' May 22, 2012, Supplemental Questionnaire Response at Exhibit 10. Therefore, we preliminarily determine that the provision of water is not specific to the industrial zones in which the respondents are located, and find that the Infinite Companies and the Hamico Companies did not use the program.

We note that, based on the record information thus far, the level of government at which the actual rate-setting authority rests remains unclear. While the GOV issues a national pricing framework for water supply, distribution and consumption, the actual published rate schedules are issued at the provincial levels on approval by the provincial governments. See GOV's March 30, 2012, Questionnaire Response at Exhibit 6. Hence, we will continue to examine the price-setting regime for water in Vietnam.

C. Provision of Wire Rod for LTAR

The Infinite Companies state that they only purchased wire from foreign sources during the POI. <u>See</u> the Infinite Companies' May 11, 2012, at 9 and Attachment 3. The Hamico Companies state that they did not purchase wire rod from Vietnamese sources during the POI. Instead, they report that they either imported wire rod from foreign sources or purchased wire from domestic sources.

The allegation on which the Department initiated its investigation centers on the provision of wire rod not drawn wire. We find that wire is a good that is distinct from wire rod. On this point, we note that the Hamico Companies have submitted source documents (<u>e.g.</u>, invoices) which indicate the specifications (<u>e.g.</u>, diameter) of the wire they purchased from domestic sources during the POI. <u>See</u> the Hamico Companies' May 16, 2012, supplemental questionnaire response at Exhibits 1 – 4. Our review of these source documents, confirms our preliminary finding that the inputs the Hamico Companies purchased from domestic sources constitute wire products and not wire rod. Thus, we find that purchases of wire rod from non-Vietnamese sources are not subject to our subsidy analysis. On this basis, we preliminarily determine that respondents did not use the provision of wire rod for LTAR program during the POI.

In addition, we preliminarily determine that respondents did not use the programs listed below:

D. Export Promotion Program

E. Land Rent Reduction/Exemption for Exporters

F. Land-Rent Reduction or Exemption for Foreign Invested Enterprises ("FIEs")

G. Income Tax Preferences for FIEs

H. Income Tax Refund for Reinvestment by FIEs

I. Income Tax Preferences in Industrial Zones

J. Import Duty Preferences for FIEs

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for the respondents individually investigated, the Hamico Companies and the Infinite Companies. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/Manufacturer	**Net Subsidy Rate**
South East Asia Hamico Export Joint Stock Company (SEA Hamico), Nam A Hamico Export Joint Stock Company (Nam A), and Linh Sa Hamico Company Limited (Linh Sa) (collectively, the Hamico Companies)	**21.25 %**
Infinite Industrial Hanger Limited (Infinite) and Supreme Hanger Company Limited (Supreme) (collectively the Infinite Companies)	**11.03 %**
All Others	**16.14 %**

Sections 703(d), 705(c)(1)(B)(i)(I), and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weight-averaging the individual subsidy rates by each company's exports of the subject merchandise to the United States. However, the all-others rate may not include zero and de minimis rates or any rates based solely on the facts available.[27] In this preliminary determination, the calculated net subsidy rate for the Hamico

[27] Pursuant to 19 CFR 351.204(d)(3), the Department must also exclude the countervailable subsidy rate calculated for a voluntary respondent. In this investigation, we had no producers or exporters request to be voluntary respondents.

Companies and the Infinite Companies are above de minimis. Notwithstanding the language of sections 705(c)(1)(B)(i)(I), and 705(c)(5)(A) of the Act, we have not calculated the all others rate by weight averaging the rates of the Hamico and Infinite Companies because doing so risks disclosure of proprietary information. Therefore, for the all others rate, we have calculated a simple average of the respondents' net subsidy rates.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of steel wire garment hangers from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above.[28]

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

[28] See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. See 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. See 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a request within 30 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

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Paul Piquado
Assistant Secretary
  for Import Administration

*May 29, 2012*_
Date

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